

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FREDERICK BANKS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:08cv336-DCB-MTP

D. BUTLER, et al.

DEFENDANTS

ORDER

This matter is before the court on a Motion [39] to Interchange Defendant and for Correction filed by Plaintiff on January 15, 2010. Having reviewed the motion, the court finds that it should be denied.

In his motion, Plaintiff seeks to correct Defendant Rachael Fieber's name. She was previously identified by him as "Rachel Fiber." As the summons has been issued to Ms. "Fieber" (*see* [42]), and as her name is also correctly spelled on the docket, the relief sought by Plaintiff is moot.

Plaintiff also seeks to substitute Elizabeth Foster for one of the John Doe Defendants. Plaintiff claims that Ms. Foster violated his Eighth Amendment rights by issuing him an incident report for going to the bathroom. However, this claim is not mentioned in Plaintiff's pleadings. *See* Cplt. [1]; Supp. Cplt. [5]; Second Supp. Cplt. [6]. In order for this lawsuit to reach a resolution, it is necessary for the relevant issues to be defined and addressed - something which cannot happen if Plaintiff is allowed to amend his complaint to add unrelated claims. Moreover, by Order [36] dated January 8, 2010, Plaintiff's Motion [33] to Substitute Party was granted and Plaintiff was allowed to substitute six individuals for John Doe Defendants. Plaintiff failed to mention Ms. Foster in that motion, even though he alleges that his claim against her arose prior to the filing of the instant lawsuit. Accordingly, and in light of the fact that this case has been pending since December 19, 2008, the court finds that the case should proceed to disposition of

the claims currently before the court. Should Plaintiff desire to proceed with a claim against Ms. Foster, he may do so by filing a separate action.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion [39] to Interchange Defendant and for Correction is denied.

SO ORDERED AND ADJUDGED this the 22nd day of March, 2010.

s/ Michael T. Parker

United States Magistrate Judge